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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2009-315

13 DENA DANIELL BARKER, RN
14 1455 South State Street, Space 80
Hemet, CA 92543

A C C U S A T I O N

15 Registered Nurse License No. 662012

16 Respondent.

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18 Complainant alleges:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about July 28, 2005, the Board of Registered Nursing (Board) issued
24 Registered Nurse License Number 662012 to Dena Daniell Barker, RN (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein, and will expire on February 28, 2009, unless renewed.

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1 7. Section 2764 states:

2 The lapsing or suspension of a license by operation of law or by order or
3 decision of the board or a court of law, or the voluntary suspension of a license
4 by a licensee shall not deprive the board of jurisdiction to proceed with any
 investigation of or disciplinary proceeding against such license, or to render a
 decision suspending or revoking such license.

5 8. Section 2811, subdivision (b), provides in pertinent part, that each
6 license not renewed in accordance with that section shall expire, but may within
 a period of eight years thereafter be reinstated.

7 9. Section 482 of the Code states:

8 Each board under the provisions of this code shall develop criteria to evaluate
9 the rehabilitation of a person when:

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11 (b) Considering suspension or revocation of a license under Section 490.

12 Each board shall take into account all competent evidence of rehabilitation
 furnished by the applicant or licensee.

13 10. Section 490 of the Code states:

14 A board may suspend or revoke a license on the ground that the licensee
15 has been convicted of a crime, if the crime is substantially related to the
16 qualifications, functions, or duties of the business or profession for which the
17 license was issued. A conviction within the meaning of this section means a plea
18 or verdict of guilty or a conviction following a plea of nolo contendere. Any action
19 which a board is permitted to take following the establishment of a conviction may
20 be taken when the time for appeal has elapsed, or the judgment of conviction has
21 been affirmed on appeal, or when an order granting probation is made suspending
22 the imposition of sentence, irrespective of a subsequent order under the provisions
23 of Section 1203.4 of the Penal Code.

24 11. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted
26 by a board within the department pursuant to law to deny an application for a
27 license or to suspend or revoke a license or otherwise take disciplinary action
28 against a person who holds a license, upon the ground that the applicant or the
 licensee has been convicted of a crime substantially related to the qualifications,
 functions, and duties of the licensee in question, the record of conviction of the
 crime shall be conclusive evidence of the fact that the conviction occurred, but
 only of that fact, and the board may inquire into the circumstances surrounding
 the commission of the crime in order to fix the degree of discipline or to determine
 if the conviction is substantially related to the qualifications, functions, and duties
 of the licensee in question.

 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
 and 'registration.'

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12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

13. California Code of Regulations, title 16, section 1445, states:

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(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 FIRST CAUSE FOR DISCIPLINE

2 (February 20, 2008 - Driving Under the Influence of Alcohol
3 With B.A.C. of 0.08% or Higher on November 16, 2007)

4 15. Respondent is subject to disciplinary action under sections 2761(f) and
5 490, in conjunction with California Code of Regulations, title 16, section 1444, in that
6 Respondent was convicted of a crime which is substantially related to the qualifications,
7 functions, or duties of a licensed registered nurse, in that on or about February 20, 2008,
8 Respondent was convicted by the court on her plea of guilty, of violating Vehicle Code section
9 23152(b), (Driving Under the Influence of Alcohol With B.A.C. of 0.08% or Higher), a
10 misdemeanor. The circumstances are as follows:

11 a. On November 16, 2007, Hemet Police Department officers were
12 dispatched to a possible drunk driver collision at a mobile home park. Upon arrival, officers
13 made contact with the assistant manager of the mobile home park who told officers Respondent
14 had been drinking and ran over a large rock and mailbox. The manager directed officers to
15 Respondent's unit. Upon making contact with Respondent inside Respondent's unit, officers
16 observed that she was unable to stand on her own and had to hold her arm as she was led to the
17 porch of her unit. Officers asked Respondent if she was okay, and Respondent replied that she
18 just wanted to get her kids back. Officers could smell a very strong odor of an alcoholic
19 beverage coming from her breath and person. Respondent's speech was slurred and at times
20 incoherent. Respondent was asked how much she had to drink that day and Respondent replied
21 that she had "two strong drinkies." Officers conducted a series of Field Sobriety Tests. Using a
22 Preliminary Alcohol Device, Respondent blew a .288%. Respondent was placed under arrest.

23 b. As a result of the above conviction, Respondent was placed on three (3)
24 years summary probation, ordered to pay \$1,753 in fines, attend a first offender DUI program for
25 nine (9) months, submit to chemical test of blood saliva, breath or urine for any law enforcement
26 officer, and not drive within six hours of consuming alcohol.

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